

Award No. 1640

Case No. 2370

2-B&O-FT-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Upon failure of the Division to agree upon the procedural steps to be followed in the handling of this case, the Labor Members invoked the services of the National Mediation Board for the appointment of a referee to break the deadlock, as provided in Section 3, First (L) of the Railway Labor Act. Upon certification, the National Mediation Board appointed Harold M. Gilden for that purpose.

Following is the case in question, the opinion and award of the Second Division with Referee Gilden sitting as a member thereof.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the assignment of other than electricians and machinists to perform the work of the Electrical Workers Craft and the work of the Machinists Craft as covered in their respective work scope rules in connection with the maintaining and repairing of car retarders, is not authorized by the current agreement.

2. That accordingly the carrier be ordered to:

- a) Assign employees of the Electrical Workers Craft to perform the aforesaid work covered in their work scope rules of the current agreement.
- b) Assign employees of the Machinists Craft to perform the aforesaid work covered in their work scope rules of the current agreement.

OPINION OF THE DIVISION: Following receipt of notice, dated October 13, 1952, from Railway Employees' Department, A.F. of L., on behalf of System Federation No. 30, of intention to file within thirty (30) days an ex parte submission relating to a certain existing dispute on the Baltimore and Ohio Railroad, the Division deadlocked on the subject matter of a motion made October 27, 1952, concerning the propriety of the Executive Secretary giving the carrier the usual letter notification of the impending case and request to file its submission.

The Labor Members of the Division insist that under the governing procedural rules set forth in Circular No. 1, the Secretary has no authority to withhold such notice to the carrier, and that any question as to whether or

not additional parties similarly are entitled to be given notice of the filing of the dispute, cannot properly be determined at this time, but must await the filing of the respective submissions by the contending parties, and the subsequent docketing of the case. With equal force, the Carrier Members argue that the instant claim is identical, in all material aspects to that which was heretofore considered by the Division in Docket 1423, Award 1523, wherein it was ruled that the signalmen should be given notice of the pendency of these proceedings. Accordingly, say the Carrier Members, the Secretary should not release the letter to the carrier unless and until adequate provision is made for observing the dictates of the prior holding.

It is to the resolving of this impasse that we now center our attention.

From a comparison between the claim proposed to be filed in this case, and that which was dealt with in Docket 1423, Award 1523, it appears that the instant dispute is a further progressing of the same issue. In fact, from the very nature of the previous decision, a later handling of the controversy, ultimately leading to a decision on the merits, when conditioned upon due compliance with the notice requirements therein prescribed, was made both a real and a foreseeable possibility. There is no question that the findings in Award 1523 clearly stipulate that the signalmen should be given notice of any future adjudication of that dispute. To directly ignore such previous determination, or to otherwise circumvent its precise pronouncements, would be tantamount to a reversal.

In this instance, we are not disposed to proceed in that direction. Instead, it is our purpose to lay down a course of action that will give effect to the import of Award 1523, and still strictly adhere to the well established procedural rules promulgated by Circular No. 1. We hold, therefore, that the deadlock on the motion of October 27, 1952 before the Division shall be disposed of in the manner as is indicated in the following award.

AWARD

1. The Executive Secretary of the Second Division forthwith shall prepare and mail to the Baltimore and Ohio Railroad the usual letter notifying said carrier of receipt of notice dated October 13, 1952, from Railway Employees Department, A.F. of L., on behalf of System Federation No. 30, and requesting that said carrier file its submission with the Second Division within thirty (30) days.

2. Upon receipt of the submissions filed by both parties in compliance with Circular No. 1, the case shall be thereupon docketed by the Second Division.

3. That immediately following the docketing of said case the Executive Secretary of the Second Division shall advise the signalmen's organization of the pendency of these proceedings, and give them due notice of any and all hearings in connection therewith.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1953.